

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case Number: 1:12-cv-00257-JB-LFG

LARRY A. GOLDSTONE, CLARENCE G. SIMMONS,  
III, and JANE E. STARRETT,

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Pursuant to Local Rule of Civil Procedure 7.8(b) and in further support of the Motions to Dismiss by Larry Goldstone, Clarence Simmons, and Jane Starrett, the Defendants submit this Notice of Supplemental Authority to provide the Court with a pertinent and significant authority that has come to their attention.

MHC Mutual Conversion Fund, L.P. v. United Western Bancorp, Inc., No. 11-cv-00624, 2012 WL 6645097 (D. Col. Dec. 19, 2012) – which, like this case, involved allegations that statements defendants made in relation to an “other-than-temporary impairment” (OTTI) determination violated the securities laws – provides support for the principle that Defendants’ OTTI judgment was a statement of opinion or belief that cannot support Plaintiff’s claims because the Complaint does not allege “facts showing that the belief was both objectively and subjectively false at the time the statement was made.” See Supplemental Brief in Support of Motion to Dismiss on Behalf of Defendants Larry Goldstone and Clarence G. Simmons (Dkt #69) at 2-6 (internal citation omitted).

Specifically, the Court in MHC Mutual Conversion Fund, L.P. concluded that a statement regarding OTTI is an opinion, not a matter of objective fact, because the “determination of OTTI

reflects the entity's judgment regarding multiple factors.” MHC Mutual Conversion Fund, L.P., at \*9. The court reasoned that the determination of whether an entity expects to recover a security's amortized cost is “dependent upon market forces, market trends, and unknown variables” and concluded “the determination of whether a security's impairment is other-than-temporary is far from objectively determinable.” Id.

The court then concluded “plaintiffs asserting claims under the [securities laws] that are based on opinions, must allege that the opinions are objectively and subjectively false.” Id. at \*11. In doing so, the court also relied on another recent case that reached the same conclusion. Id. at 10-11 (citing Wolfe v. Aspenbio Pharma, Inc., 2012 WL 4040344, at \*8 (D. Colo. Sept. 13, 2012)). Because the plaintiffs' complaint was devoid of allegations that the defendants did not believe their statements regarding OTTI were true at the time they were made, the court granted the defendants' motion to dismiss.

Dated: January 11, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 11, 2013, the foregoing *Notice of Supplemental Authority* was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record:

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